

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

**MARGARET ELIZABETH BUTLER v. TEXAS BOOT, ET AL.**

**Circuit Court for Smith County  
No. 4015**

---

**No. M1999-00674-WC-R3-CV - Filed - August 14, 2000**

---

**JUDGMENT**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT NASHVILLE  
June 2000 Session

**MARGARET ELIZABETH BUTLER v. TEXAS BOOT, INC., ET AL.**

**Direct Appeal from the Circuit Court for Smith County  
No. 4015 John D. Wooten, Jr., Judge**

---

**No. M1999-00674-WC-R3-CV - Mailed - July 12, 2000  
Filed - August 14, 2000**

---

The appellant contends the trial judge erred (1) in determining the employee's condition arose out of the employment and (2) in applying Tenn. Code Ann. § 50-6-242, and (3) that the award is excessive.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed.**

LOSER, SP. J., delivered the opinion of the court, in which DROWOTA, J., and TURNBULL, SP. J., joined.

James H. Tucker and Stacey D. Billingsley, Nashville, Tennessee, for the appellants, Texas Boot, Inc., Nine West Group, Inc., and Continental Insurance Company.

Jacky O. Bellar, Carthage, Tennessee, for the appellee, Margaret Elizabeth Butler.

Jerry R. Humphreys and John T. Horton, Nashville, Tennessee, for the appellee, Liberty Mutual Insurance Company.

**MEMORANDUM OPINION**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. As discussed below, the panel has concluded the judgment should be affirmed.

The employee or claimant, Butler, is fifty-nine years old and has an eighth grade education. She has worked for the employer, Texas Boot, since she was nineteen years old. She gradually developed contact dermatitis, asthma, hypertension and deterioration of her mental functions during

those years. The condition has become so severe that she is no longer able to do her work. Her physician, Dr. Jacob Veenstra, the only expert witness who testified at the trial, attributed her conditions to "thirty-seven years of exposure to freshly treated leather, the various materials that were used to cure the leather." The doctor's testimony also included the following questions and answers:

Q. Are you aware of anything she can do at this time?

A. I suspect if somebody gave her a broom, she might be able to sweep a broom someplace, but anything with a complex task, she would be effectively unemployed. And the problem is if she truly told her history to a new employer, she would be really unhireable in the fact that she has very labile hypertension, and I suspect she would miss a fair amount of time off work; and as such I think she would not be a reliable employee.

Q. Doctor, within a reasonable degree of medical certainty are these conditions permanent?

A. Yes.

From the above summarized evidence, the trial judge found the claimant to be permanently disabled from working and awarded permanent disability benefits for 400 weeks at her compensation rate. Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This standard requires the panel to examine in depth a trial court's factual findings and conclusions. The reviewing tribunal is not bound by a trial court's factual findings but instead conducts an independent examination to determine where the preponderance of the evidence lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584 (Tenn. 1991). Conclusions of law are subject to de novo review without any presumption of correctness. Ivey v. Trans Global Gas & Oil, 3 S.W.3d 441 (Tenn. 1999).

In order to establish that an injury or occupational disease was one arising out of the employment, the cause of the injury must be proved; and, if the claim is for permanent disability benefits, permanency must be proved. Hill v. Royal Ins. Co., 937 S.W.2d 873 (Tenn. 1996). In all but the most obvious cases, causation and permanency may only be established through expert medical testimony. Thomas v. Aetna Life and Cas. Ins. Co., 812 S.W.2d 278 (Tenn. 1991). The uncontradicted expert medical testimony of Dr. Veenstra clearly establishes both causation and permanency. Such testimony is not overcome by speculation that the conditions could have been caused outside the working environment.

Where, as here, an injured worker is entitled to receive permanent partial disability benefits to the body as a whole, and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is six times the medical impairment rating. Tenn. Code Ann. § 50-6-241(b). Notwithstanding that limitation, a court may award permanent partial disability benefits, not to exceed four hundred weeks, in appropriate cases where permanent medical impairment is found and the employee is entitled to receive the maximum award of six times the medical impairment rating. In such cases, the court must make a specific

documented finding, supported by clear and convincing evidence, that on the date the employee reached maximum medical improvement, at least three of the following four circumstances existed: (1) the employee lacked a high school diploma or general equivalency diploma or could not read or write on a grade eight level; (2) the employee was age fifty-five or older; (3) the employee had no reasonably transferable job skills from prior vocational background or training; and (4) the employee had no reasonable employment opportunities available locally considering the employee's permanent medical condition. Tenn. Code Ann. § 50-6-242. In this case, the trial judge made the required findings on three of the four circumstances.

In Ingram v. State Industries, Inc., 943 S.W.2d 381 (Tenn. 1995), the Supreme Court observed that, as a general rule, expert vocational testimony is required to establish items (3) and (4) above. The appellant insists the trial court thus erred by exceeding the limitations of section 241(b). In the present case, however, the uncontradicted, clear and convincing testimony of the worker's treating physician that she is effectively unemployable, obviates the required expert vocational testimony. Moreover, the employer offered no proof from which the trial court could have determined the employee's permanent medical impairment. The trial court could hardly be held to the six times multiplier under such circumstances.

The appellants' final contention is that the award is excessive, particularly in the absence of a medical impairment rating. A medical or anatomical impairment rating is not always indispensable to a trial court's finding of permanent vocational disability. Hill v. Royal Ins. Co., 937 S.W.2d 873, 876 (Tenn. 1996). In addition, the trial courts are to consider all the evidence, both expert and lay testimony, to decide the extent of an employee's disability. Walker v. Saturn Corp., 986 S.W.2d 204, 208 (Tenn. 1998). As already noted, Ms. Butler is nearly sixty years old with little or no formal education and no vocational training or special skills. According to her physician, her husband and her sister, she is unable to perform any tasks other than simple household chores. The evidence fails to preponderate against the award of benefits for 400 weeks.

At the time of her last injurious exposure to the freshly treated leather, the employer was insured by Continental Casualty Company. The trial court properly applied Tenn. Code Ann. § 50-6-304.

For the above reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.